



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 5, 2012

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2012-15878

Dear Ms. Lentz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 467075.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for any and all records of automobile accidents in which a named sheriff's deputy (the "deputy") was operating a vehicle during the deputy's employment, including accident crash reports, internal memos, employment records, and insurance documents; copies of correspondence between the deputy and the sheriff's office during the deputy's employment regarding any disciplinary action; and a copy of the policy coverage with the Texas Association of Counties Risk Management Pool for Williamson County for the year 2011. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.147, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information pertaining to the policy coverage with the Texas Association of Counties Risk Management Pool for our review. Although you state the sheriff's office submitted a representative sample of information, no portion of the submitted representative sample pertains to this policy coverage. Thus, we find the submitted information is not representative of the information sought in that portion of the request. Please be advised this open records letter applies only to the type of information you have submitted for our review. Therefore, this letter ruling does not authorize the

withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information is presumed to be public). Thus, to the extent any information responsive to this portion of the request existed when the present request was received, we assume it has been released.<sup>1</sup> If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note portions of the submitted video recordings are not responsive to the instant request because they do not pertain to automobile accidents involving the deputy. We have indicated this non-responsive information in the submitted recordings. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff's office is not required to release non-responsive information in response to the request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(c) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided two of the three pieces of required information for release of the submitted CR-3 accident reports. Thus, we find the sheriff's office must withhold the CR-3 accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.<sup>2</sup>

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the sheriff’s office must withhold the date of birth you have marked, in addition to the one we have marked, under section 552.102(a) of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Furthermore, this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990).

Upon review, we agree some of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the sheriff’s office must withhold the information we have marked in the submitted documents under section 552.101 in conjunction with common-law privacy. We further find portions of the submitted video recordings contain information that is highly intimate or embarrassing and not of legitimate public concern. You state the sheriff’s office does not have the technological capability to redact information contained in the submitted video recordings. Thus, the sheriff’s office must withhold the recordings we have indicated in their entirety under section 552.101 in conjunction with common-law privacy.<sup>3</sup> *See* Open Records Decision No. 364 (1983). However, we find the sheriff’s office has failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff’s office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). You state the information you have marked belongs to currently licenced peace officers. Accordingly, we conclude the sheriff's office must withhold the information you have marked, as well as the additional information we have marked, in the submitted documents under section 552.117(a)(2). However, the marked cellular telephone numbers may only be withheld under section 552.117(a)(2) if the cellular telephone services are not paid for by a governmental body.

We note portions of the remaining information are subject to section 552.1175 of the Government Code.<sup>4</sup> Section 552.1175 of the Government Code applies to information pertaining to peace officers that the sheriff's office does not hold in an employment context and provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Section 552.1175 is also applicable to personal pager and cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Upon review, we conclude the sheriff's office must withhold the cellular telephone number we have marked under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b). However, the sheriff's office may withhold this information only if the cellular service is not paid for with government funds. If the individual is no longer a licensed peace officer or no election is made the sheriff's office may not withhold the individual's information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Upon review, we agree some of the submitted information is subject to section 552.130. However, we note you seek to withhold motor vehicle record information that belongs to the requestor and driver's license numbers that belong to the requestor's wife and daughter. The purpose of section 552.130 is to protect the privacy interests of individuals. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code, and the sheriff's office may not withhold that information from this requestor under section 552.130. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning themselves). Furthermore, the requestor may have a right of access to the driver's license numbers that belong to his wife and daughter. *See* Gov't Code § 552.023(a). To the extent the requestor does not have a right of access under section 552.023, the sheriff's office must withhold the information we have marked in the submitted documents and indicated on the submitted photographs under section 552.130. We further find the remaining video recording contains information subject to section 552.130. You state the sheriff's office does not have the technological capability to redact information contained in the video recording. Thus, the sheriff's office must withhold the video recording we have indicated in its entirety under section 552.130. *See* ORD 364.

We note some of the submitted information is subject to section 552.136 of the Government Code. Section 552.136(b) of the Government Code states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't

Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Accordingly, the sheriff's office must withhold the information we have marked under section 552.136 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. You inform us the information you have marked under section 552.152 belongs to an undercover officer of the sheriff's office. You state release of this information would put the life of this officer at risk. Based on your representation and our review, the sheriff's office must withhold the information you have marked under section 552.152 of the Government Code.

In summary, the sheriff's office must withhold the CR-3 accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, and the date of birth you have marked and the one we have marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we have marked in the submitted documents and the video recordings we have indicated in their entirety under section 552.101 in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.117(a)(2), including the cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. The sheriff's office must withhold the cellular telephone number we have marked under section 552.1175 of the Government Code if the individual to whom the information pertains is still a licensed peace officer, elects to restrict access to his information, and the cellular service is not paid for by a governmental body. To the extent the requestor does not have a right of access under section 552.023 of the Government Code, the sheriff's office must withhold the motor vehicle record information we have marked in the submitted documents, indicated in the submitted photographs, and the video recording we have indicated in its entirety under section 552.130 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.136 of the Government Code, and the information you have marked under section 552.152 of the Government Code. The remaining responsive information must be released.<sup>5</sup>

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<sup>5</sup>We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023. Because such information is confidential with respect to the general public, if the sheriff's office receives another request for this information from a different requestor, then the sheriff's office should again seek a ruling from this office.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/eb

Ref: ID# 467075

Enc. Submitted documents

c: Requestor  
(w/o enclosures)